KARPAL SINGH

v.

ATIP ALI

SUPREME COURT, KUALA LUMPUR
GEORGE SEAH SCJ
HASHIM YEOP SANI SCJ
WAN HAMZAH SCJ
[CIVIL APPEAL NO. 69 OF 1986]
25 SEPTEMBER 1986

LEGAL PROFESSION: *Advocate and solicitor - Officer of the Court - Dereliction of duty - "conspiciously unmaintainable" suit - Who should pay costs of the proceedings.*

In the High Court below, after the learned Judge had struck out the civil suit, Karpal Singh (2nd defendant), appearing in person applied for the costs of the action to be borne by Karam Singh, learned Counsel for the plaintiff (the respondent in this appeal), personally. The learned Judge declined to make such an order. On appeal, Karpal Singh argued that the learned Judge had failed to exercise his discretion judicially. It was submitted that after finding the civil suit brought by the plaintiff to be "conspiciously unmaintainable" and in the absence of any explanation given by Karam Singh, the learned Judge should have acceded to the application.

Held:

[1] An advocate and solicitor is an officer of the Court and his professional conduct is always under the supervision and scrutiny of the Court. It follows that when there is dereliction of duty on the part of an advocate and solicitor in the conduct of his professional work the Court may, in a proper case, order him to be personally liable for the costs of the proceedings after giving him an opportunity to defend himself.

[2] Having come to the conclusion that the civil suit filed by the plaintiff was "conspiciously unmaintainable" and having rejected the explanation given by Karam Singh, their Lordships were of the opinion that this was a proper case where the learned Judge ought to have exercised his discretion and ordered that the costs of the proceedings be paid by Karam Singh, the lawyer, personally.

[3] Their Lordship amended the order of the learned Judge by adding the words that "Karam Singh, do repay to the plaintiff, costs which the plaintiff has been ordered to pay to Karpal Singh, the 2nd defendant, under O. 59 r. 8(2)(b) of the Rules of the High Court 1980".

[Appeal allowed with costs.]

Cases referred to:
Myers v. Elman [1940] AC 282
Edwards v. Edwards [1958] P 235
Mitra & Co. v. Thevar & Anor. [1960] 26 MLJ 79

Legislation referred to:
Rules of the High Court 1980, O. 59 r. 8(2)(b)

For the appellant in person - Karpal Singh; M/s. Karpal Singh & Co.
For the respondent - Karam Singh; M/s. Karam Singh Veriah & Co.

JUDGMENT

George Seah SCJ:

The first thing to remember is that an advocate and solicitor is an officer of the Court and that his professional conduct is always under the supervision and scrutiny of the Court. It follows that when there is dereliction of duty on the part of an advocate and solicitor in the conduct of his professional work the Court may, in a proper case, order him to be personally liable for the costs of the proceedings after giving him an opportunity to defend himself.

In the High Court below, after the learned Judge had struck out the civil suit, Karpal Singh (2nd defendant), appearing in person applied for the costs of the action to be borne by Karam Singh, learned counsel for the plaintiff, personally. The learned Judge declined to make such an order. On appeal, Karpal Singh argued that the learned Judge had failed to exercise his discretion judicially. It was submitted that after finding the civil suit brought by the plaintiff to be "conspiciously unmaintainable" and in the absence of any explanation given by Karam Singh, the learned Judge should have acceded to the application. We think the learned Judge had misconstrued the principle laid down by the House of Lords in *Myers v. Elman* [1940] AC 282 explained by Sachs J in *Edwards v. Edwards* [1958] P 235 and followed by the then Court of Appeal in the case of *Mitra & Co. v. Thevar & Anor*. [1960] 26 MLJ 79. In our opinion, having come to the conclusion that the civil suit filed by the plaintiff was "conspiciously unmaintainable" and having rejected the explanation given by Karam Singh, we think that this was a proper case where the learned Judge ought to have exercised his discretion and ordered that the costs of the proceedings be paid by Karam Singh, the lawyer, personally. We therefore allow the appeal and amend the order to the learned Judge by adding the words that "Karam Singh, do repay to the plaintiff, costs which the plaintiff has been ordered to pay to Karpal Singh, the 2nd defendant, under O. 59 r. 8(2)(b) of the Rules of the High Court 1980". Costs of the appeal to the appellant to be paid by Karam Singh personally. Deposit to be refunded to the appellant.

Also found at [1986] 2 CLJ 419